

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGRE-00 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 EPG-02 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01

SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12

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TO SECSTATE WASHDC 4227

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FROM: LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJECT INFORMAL PLENARY OF 23 JUNE 1977 ON ARTICLE 18 (OPTIONAL EXCEPTIONS), PART IV (COMPULSORY DISPUTE SETTLEMENT)

1. SUMMARY:

THE DISCUSSION ON ARTICLE 18 (1) (A) (BOUNDARY DELIMITATIONS) CONTINUED, WITH SIMILAR ARGUMENTS ON BOTH SIDES BEING RAISED AS YESTERDAY. ALTHOUGH THE CHAIRMAN (AMERASINGHE) HAD LIMITED THE DEBATE EARLIER TO 1(A), HE EXPANDED IT SO AS TO INCLUDE THE OTHER PROVISIONS OF ARTICLE 18, INCLUDING 1(B) (THE MILITARY EXCEPTION) AND 1(C) (THE SECURITY COUNCIL EXCEPTION). MEXICO, ECUADOR, BRAZIL AND KOREA SUPPORTED THE DELETION OF ARTICLE 18 (1) (B). BRAZIL, SUPPORTED BY THE NETHERLANDS AND MEXICO, URGED DELETION OF 1(C) ON THE GROUNDS THAT IT WAS A TRUSIM UNDER ARTICLE 103 OF THE CHARTER. ISRAEL RAISED SPECIFIC PROBLEMS OF TERMINOLOGY ("DISPUTE", "SEIZED").

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THE U.S. STATED THAT THE RESIDENT'S AMENDMENT TO 1(C) WAS AN IMPROVEMENT OVER REV.2, THAT PRECEDENTS FOR MILITARY EXCEPTIONS WERE ABUNDANT IN INTERNATIONAL TREATIES, AND EXPLAINED THE INTERRELATIONSHIP BETWEEN ARTICLES 17 AND 18. SPEAKERS INCLUDED PORTUGAL, NEW ZEALAND, CHILE, CANADA, KOREA, SYRIA, BRAZIL, ARGENTINA, THE USSR, ITALY, MEXICO, JAPAN, THE GDR, THE NETHERLANDS, DENMARK, ECUDADOR, GREECE, GHANA,

ISRAEL, FRANCE, SWITZERLAND, INDIA, THE USA AND AUSTRALIA. END SUMMARY.

2. ARTICLE 18 (1) (A) - PORTUGAL, CHILE, KOREA, SYRIA, BRAZIL, MEXICO, THE NETHERLANDS, DENMARK, SWITZERLAND, JAPAN AND INDIA MOVED FOR THE DELETION OF 1(A) TO KEEP ALL RESERVATIONS TO CDS TO A MINIMUM. THEY ARGUED ALSO THAT IT MIGHT PROVE IMPOSSIBLE TO FIND A BINDING PROCEDURE ACCEPTABLE TO ALL PARTIES. CANADA PREFERRED ITS DELETION BUT COULD ACCEPT IT WITH APPROPRIATE AMENDMENT. ITALY COULD ACCEPT IT, PROVIDED AN AMENDMENT SUCH AS THE PROPOSED BY THE U.S. IS ACCEPTED. ARGENTINA, IN AN AMBIGUOUS STATEMENT (LATER CONFIRMED TO BE DUE TO THE ARGENTINA/UK DISPUTE OVER THE FALKLANDS) SUPPORTED THE SOVIET PROPOSED CAPEAU, THE PRESIDENT'S LAND/SEA AMENDMENT, THE RETENTION OF 1(A), AND THE DELETION OF THE PROVISIO TO THAT SUB-PARAGRAPH. ECUADOR ALSO SUPPORTED RETENTION OF 1(A) INCLUDING THE PROVISIO. THE USSR, SUPPORTED BY THE GDR, REITERATED ITS EARLIER PROPOSAL AND REDERRED TO THE IMPOSSIBILITY OF STATES WITH DIFFERENT SOCIAL, POLITICAL, OR ECONOMIC SYSTEMS AGREEING ON REGIONAL DISPUTE SETTLEMENT SYSTEM. IT THEREFORE PROPOSED THE DELETION OF THE PROVISIO IN 1 (A) POINTING OUT THAT NO LEGAL VACUUM WOULD EXIST GIVEN ARTICLE 33 OF THE UN CHARTER. JAPAN MADE A STRONG INTERVENTION INDICATING THAT THE PRESIDENT'S SEA/LAND AMENDMENT TO THE END OF 1(A) MADE 1(A) THE MORE DIFFICULT FOR LIMITED OFFICIAL USE

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IT TO ACCEPT. IT SUPPORTED THE DELETION OF 1(A) AND THE POSTPONEMENT OF CONSIDERATION OF ALL RESERVATIONS INCLUDED IN ARTICLE 18 FOR THE DISCUSSION ON FINAL CLAUSES. IT BELIEVED THE PRESIDENT'S PROPOSED AMENDMENT WOULD RESULT IN COMPLETE EXCLUSION OF ANY DELIMITATION DISPUTES ON THE BASIS THAT THE DELIMITATION RELATED TO INSULAR OF LAND TERRITORY.

3. KOREA, SYRIA, BRAZIL, MEXICO, AND THE NETHERLANDS EXPRESSED THEIR PREFERENCE FOR COMPLETE DELETION OF ARTICLE 18.

4. ARTICLE 18 (1)(B) - MEXICO, ECUADOR, BRASIL AND KOREA STATED THAT THERE WAS NO JUSTIFICATION FOR RETENTION OF 1(B), WHICH BUT ENURED TO THE BENEFIT OF A FEW MARITIME POWERS. BRASIL FURTHER ADDED THAT THERE WAS NO JUSTIFICATION FOR THE PROVISIO CLAUSE IN 1(B), WHICH IF RETAINED WOULD VITIATE ALL ENFORCEMENT ACTIVITIES BY A COASTAL STATE RELATING TO ITS LIVING RESOURCES. ECUADOR INDICATED THAT COASTAL STATES ENJOYING EXCLUSIVE JURISDICTION IN ARTICLE 17 COULD WELL WISH TO SUBMIT A DISPUTE INVOLVING MILITARY ACTIVITIES BY FOREIGN STATES WITHIN

THEIR ECONOMIC ZONES TO INTERNATIONAL ADJUDICATION, BUT WOULD BE PRECLUDED FROM SO DOING UNDER 18 (1)(B). THE US, EXPLAINING THE INTERRELATIONSHIP OF ARTICLES 17 AND 18, STATED THAT THIS WAS NOT THE CASE (V. PARAGRAPH 7, INFRA). SWITZERLAND, OBJECTING TO THE FRENCH RENDITION OF "MILITARY ACTIVITIES" (ACTES D' EXECUTION FORCEEE), STATED THAT THE INTERPRETATION OF SUCH A PHRASE WAS UNACCEPTABLE, AND THAT IF (1)(B) WERE RETAINED IT WOULD PREFER "JURISDICTIONAL ACTS" IN PLACE OF "MILITARY ACTIVITIES." ALTHOUGH ARGENTINA PREFERRED THAT (1)(B) ALSO BE DELETED, SHE STATED THAT SHE SHOULD ACCEPT IT ON CONDITION THAT THE PROVISIO CLAUSE BE DELETED.

5. ARTICLE 18 (1)(C) - THE MAJORITY OF SPEAKERS SUPPORTED LIMITED OFFICIAL USE

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DELETION OF THIS SUBPARAGRAPH. BRAZIL SUPPORTED ITS DELETION ON THE PREMISE THAT (1)(C) WAS A TRUSIM, GIVEN: (A) THAT UNDER ARTICLE 103 OF THE UN CHARTER, IN EVENT OF CONFLICT BETWEEN THE CHARTER AND ANY OTHER INTERNATIONAL AGREEMENT THE CHARTER ARTICLES WOULD PREVAIL AMONG MEMBER STATES; AND (B) THAT UNDER CHAPTER VI OF THE CHARTER, ISSUES BROUGHT BEFORE ANY OTHER LEGAL BODY WOULD BE WITHDRAWN IN THE EVENT THAT THE SECURITY COUNCIL WERE SEIZED OF THE SAME DISPUTE. MEXICO OBJECTED TO THE PROPOSED AMENDMENT ON THE GROUNDS THAT IT WENT BEYOND ARTICLE 12 OF THE UN CHARTER; WHILE THE GA COULD NOT MAKE A RECOMMENDATION ON ANY MATTER OF WHICH THE SECURITY COUNCIL WAS SEIZED, THE PROPOSED AMENDMENT TO 9(C) PREVENTED ANY CONSIDERATION OF THE MATTER AT ALL BY THE COMPETENT PART IV FORUM. THE NETHERLANDS WAS OPPOSED TO (1)(C) ON THE GROUND THAT WERE A PERMANENT MEMBER OF THE SECURITY COUNCIL TO VETO A DECISION UNDER THE PROPOSED TEXT OF (1)(C), THIS WOULD PRECLUDE ANY CONSIDERATION OF THE MATTER BY ANY OTHER FORUM. DENMARK OBJECTED TO THE VAGUENESS OF THE PHRASE "TO BE SEIZED." ECUADOR ACDEPTED THE PROPOSED AMENDMENT OT 1(C); AND ARGENTINA FOUND IT PREFERABLE TO REV.2. FRANCE CONCURRED IN SEEING NO UTILITY IN THE RETENTION OF 1(C), GIVEN THE PRIVISIONS OF THE CHARTER, WHICH ARE SUPREME IN CASE OF CONFLICT WITH OTHER INSTRUMENTS.

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FROM: LOS DEL

6. THE MAJOR INTERVENTIONS ON ARTICLE 18 1(C) WERE THOSE OF ISRAEL, SWITZERLAND AND TH U.S. ISRAEL, STATING THAT THE RSNT SHOULD CONFORM MORE CLOSELY TO THE UN CHARTER, OBJECTED TO THE WORDS "DISPUTES" AND "MATTERS" IN THE PRESIDENT'S REDRAFT OF (1)(C) AS ARTIFICIAL AND TECHNICAL, LEADING TO EVASION OF JURISDICTION, AND TO THE EXPRESSION "IS SEIZED" ON THE GROUND OF IMPRECISION. THERE WAS ALSO DANGER OF HAVING TWO FORA SEIZED OF JURISDICTION AT THE SAME TIME. ARTICLE 10(3) (COMPETENCE DE LA COMPETENCE) SHOULD BE DELETED IN ORDER TO ENHANCE THE SUPREMACY OF THE SECURITY COUNCIL. FOR SIMILAR REASONS, THE LANGUAGE OF ARTICLE 12 OF THE UN CHARTER SHOULD BE INCORPORATED IN ARTICLE 18. FOR OBVIOUS REASONS ISRAEL COULD NOT ACCEPT THE REFERENCE TO "REGIONAL" IN (1)(A) AND SUPPORTED THE USSR AMENDMENTS TO THE CHAPEAU OF ARTICLE 18 AS WELL AS ITS AMENDMENTS TO (1)(A). SWITZERLAND POINTED OUT THE DISTINCTION TO BE DRAWN BETWEEN THE PEACE-KEEPING FUNCTIONS OF THE COUNCIL AND THE DISPUTE SETTLEMENT FUNCTION OF ARTICLE 18 FORA.
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IT ALSO OBJECTED TO REFERENCES IN ARTICLES 17 AND 18 TO ARTICLE 10 (3), AS 10 (3) CONTAINS UNNECESSARY RESTRICTIONS (BEING LIMITED TO PROCEDURES UNDER ARTICLE 9).

7. IN RESPONDING TO THE REMARKS OF SEVERAL DELEGATIONS THE US REPRESENTATIVE EMPHASIZED, IN RELATION TO 1(B), THAT MANY RESERVATIONS FOR MILITARY ACTIVITIES HAD BEEN INCLUDED IN INTERNATIONAL INSTRUMENTS, INCLUDING THE DECLARATIONS OF ACCEPTANCE OF JURISDICTION OF THE ICJ

UNDER ARTICLE 36 BY FRANCE, EL SALVADOR, ISRAEL, NEW ZEALAND, AND THE SUDAN. IN DISCUSSION THE RELATIONSHIP BETWEEN ARTICLES 17 AND 18, HE STATED THAT THE ARTICLES MUST BE READ TOGETHER. ANY LAW ENFORCEMENT ACTIVITIES WHICH ARE EXEMPT FROM INTERNATIONAL ADJUDICATION UNDER ARTICLE 18 WOULD BE ALSO EXCEPTED UNDER ARTICLE 17. ON THE OTHER HAND, ACTIVITIES SUBJECT TO INTERNATIONAL JURISDICTION UNDER 17 WOULD EQUALLY BE SUBJECT TO SUCH JURISDICTION UNDER 18. SOME LAW ENFORCEMENT ACTIVITIES RELATING TO FISHING MIGHT THUS BE EXEMPT FROM INTERNATIONAL ADJUDICATION, WHILE SUCH ACTIVITIES RELATING TO MARINE ENVIRONMENT WOULD REMAIN SUBJECT TO INTERNATIONAL ADJUDICATION. IN RESPONSE TO ECUADOR'S STATEMENT, HE INDICATED THAT LAW ENFORCEMENT ACTIVITIES BY BOTH LARGE AND SMALL STATES WOULD BE TREATED ON A PARITY, AND THAT NO DISCREPANCY THEREFORE EXISTED. THE SWISS PROPOSAL TO CHANGE "MILITARY ACTIVITIES" TO "JURISDICTIONAL ACTS" WAS IN HIS VIEW INADVISABLE AS THIS WOULD ENTAIL A TREMENDOUS EXTENSION UNACCEPTABLE TO MANY DELEGATIONS. WITH REFERENCE TO (1)(C) HE SUGGESTED THE USE OF THE PHRASE IN ARTICLE 12(2) OF THE CHARTER RELATING TO MATTERS WHICH "ARE BEING DEALT WITH" BY THE SECURITY COUNCIL AS PREFERABLE TO "MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED". WITH REGARD TO ISRAEL'S OBJECTION TO "MATTERS" IN (1)(C), HE POINTED LIMITED OFFICIAL USE

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OUT THAT ARTICLE 12(2) OF THE CHARTER USES THAT WORD AND SUGGESTED THE FOLLOWING REPHRASING OF THE BEGINNING OF (1)(C): "DISPUTES RELATING TO MATTERS CONCERNING THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY WHICH ARE BEING DEALT WITH BY THE SECURITY COUNCIL UNDER THE CHARTER OF THE UNITED NATIONS." HE STATED THAT THE CHAIRMAN'S AMENDMENT TO (1)(C) WAS PREFERABLE IN THAT WHEREAS (1)(C) IN REV.2. REQUIRED A DETERMINATION BY THE SECURITY COUNCIL THAT A PROCEDURE UNDER ARTICLE 18 WOULD NOT INTERFERE WITH ITS FUNCTIONS AND THEREFORE BE SUBJECT TO A VETO, THE PROPOSED AMENDMENT REQUIRING THE SECURITY COUNCIL TO REMOVE THE MATTER FROM ITS AGENDA REQUIRED BUT A SIMPLE MAJORITY OF COUNCIL MEMBERS AND WAS NOT SUBJECT TO A VETO. WITH RESPECT TO THE SUPREMACY CLAUSE IN ARTICLE 103 OF THE CHARTER, THE U.S. REPRESENTATIVE STATED THAT ARTICLE 33 OF THE CHARTER, PROVIDING THAT PARTIES SHOULD FIRST DEAL WITH DISPUTES BY PEACEFUL MEANS OF THEIR OWN CHOICE, HAD LED TO DIFFICULTIES IN THE PAST, (E.G., WITH RESPECT TO SOME DISPUTES SUBMITTED TO BOTH THE UN AND THE OAS). ARTICLE 18 (1)(C) WAS THEREFORE NECESSARY.

8. THE CHAIRMAN ADJOURNED THE MEETING UNTIL THE INFORMAL PLENARY ON FRIDAY, 24 JUNE AT 11 A.M.
MCHENRY

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Message Attributes

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Disposition Date: 22 May 2009
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Executive Order: N/A
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TAGS: PLOS, XX, UN, LOS
To: STATE
Type: TE
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